85-1094

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1985

ALWIN E. HOPFMANN, GREGORY HESSION, CLARENCE PERKINS, CLARENCE PAULIN, and BETH SULLIVAN,

Appellants,

v.

MICHAEL JOSEPH CONNOLLY, FRANCIS X. BELLOTTI, CHESTER G. ATKINS, and the DEMOCRATIC STATE COMMITTEE OF MASSACHUSETTS,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Jurisdictional Statement

Appendix

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EDITOR'S NOTE

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UNITED STATES COURT OF APPEALS
For the First Circuit

No. 84-1317

ALWIN E. HOPFMANN, ET AL.,

Plaintiffs, appellants,

v.

MICHAEL JOSEPH CONNOLLY, ET AL.,

Defendants, Appellees.

ON REMAND FROM THE
UNITED STATES SUPREME COURT

Before

Campbell, Chief Judge,

Cowen,* Senior Circuit Judge,

and Bownes, Circuit Judge.

Lawrence J. Ball and Laurence E. Elgin on brief for appellants.

Francis X. Bbellotti, Attorney General and Alexander G. Gray, Jr., Assistant Attorney General, Chief, Elections Division, on brief for appellees, Michael Joseph Connolly, Secretary of State and Francis X. Bellotti, Attorney General.

James Roosevelt, Jr., and James H. Wexler,

Keith C. Long, and Herrick & Smith on brief for appellees, Chester G. Atkins and The Democratic State Committee of Massachusetts.

July 31, 1985

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* Of the Federal Circuit, sitting by designation.

COWEN, Senior Circuit Judge.

In Hopfmann v. Connolly, ____ U.S. ____, 105 S.Ct. 2106 (1985), the United States Supreme Court vacated in part and remanded our decision, which is reported in 746 F.2d 97 (1st Cir. 1984). In that decision, we had held that the enforcement by the Commonwealth of Massachusetts of its Democratic Parfty's so-called "15 percent rule," which limits ballot access in the state primary to candidates who receive 15 percent or more of the vote in the party's

convention, did not violate the United States Constitution. In rejecting one of appellants' contentions, that the rule violated the First and fourteenth Amendments to the Constitution, we relied on the Supreme Court's summary dismissal of an earlier appeal from a decision of the Supreme Judicial Court of Massachusetts, Langone v. Connolly, 460 U.S. 1057 (1983). The Supreme Court vacated our decision to the extent that we relied on its summary di8smissal in Langone, and held that this dismissal had no precedential effect.

Therefore, the sole question before us on remand is whether the enforcement by Massachusetts of its Democratic Party's 15 percent rule, which denied appellant Hopfmann access to the ballot in the 1982 Democratic primary for U.S. Senator, violated the First or Fourteenth Amendments. Appellants content that the state's encorcement of this rule violates their

rights to freedom of association and equal protection guaranteed by these amendments. As we understand their brief, they do not maintain as the plaintiffs in the Langone case apparently argued before the Massachusetts courts, that Massachusetts statutes per se bar the state from enforcing the 15 percent rule.[1]

Moreover, even if such a contention were before us, the Supreme Judicial Court of Massachusetts has construed the state's statutory ballot access requirements in Langone to encompass, rather than to exclude, the Democratic Party's 15 percent rule.

For the purpose of evaluating the

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[1] Appellants argue here that Massachusetts has not statutorily delegated its constitutional authority to conduct Senatorial elections to any political party. This argument was apparently made only as the basis for their contention, disposed of in our earlier decision, that the 15 percent rule violates the "time, place and manner" provisions of Article I, Section 4 of the Constitution. See 746 F.2d at 101-102.

> plaintiffs' claims that the 15% rule violated rights guaranteed to them by the Federal and State Constitutions, we treat the rule as though it were expressly contained in G.L. c. 53.

Langone v. Secretary of the Commonwealth, 388 Mass. 185, 195; 446 N.E.2d 43, 48 (1983). We are bound to follow this interpretation of state law by the state's highest court, absent extreme circumstances not present in this case. Mullaney v. Wilbur, 421 U.S. 684, 691 (1975).

A challenge to the validity of the 15 percent rule on First and fourteenth Amendment grounds was also exhaustively refuted by the Supreme Judicial Court of Massachusetts in Langone, 446 N.E. 2d at 48-51. Like the district court below, we agree with the analysis of this issue by the Massachusetts court, and do not consider it necessary to repeat that court's discussion at length. Both the rationale and the result reached in Langone are amply supported by the decisions of the

United States Supreme Court, which are cited therein. It suffices to say that the 15 percent rule's infringement of appellants' rights to associate and express political ideas, as well as their right to equal protection of the laws, is not substantial. For example, the rule does not discriminate against any class of candidates or voters, and does not disqualify any candidates from appearing on the general election ballot. Cf. Bullock v. Carter, 405 U.S. 134, 142-44 (1972); Jenness v. Fortson, 403 U.S. 431, 438-42 (1971). Moreover, the 15 percent rule promotes the legitimate and important state interest of "prevent[ing] the clogging of its election machinery, avoid[ing] voter confusion, and assur[ing] that the winner si the choice of a majority, or at least a large plurality, of those voting, * * * ." Storer v. Brown, 415 U.S. 724 (1974); Bullock v. Carter, 405 U.S. at 145.

Pursuant to the standards which have been utilized by the Supreme Court in ballot access cases, it becomes apparent that the 15 percent rule does not "unfairly or unnecessarily burden[] the availability of political opportunity." Anderson v. Celebrezze, 460 U.S. 780, 793 (1983). therefore, we hold that appellants' contention that the 15 percent rule violates the First and Fourteenth Amendments is without merit.

The remand does not require and we find no reason for reviewing or disturbing the remainder of our previous decision. Accordingly, the judgment of the district court dismissing appellants' claims is again affirmed.

AFFIRMED.

ORDER BELOW RE-AFFIRMING DISMISSAL OF DISTRICT COURT ON REMAND

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 84-1317

ALWIN E. HOPFMANN, ET AL.,

Plaintiffs, Appellants,

v.

MICHAEL JOSEPH CONNOLLY, ET AL.,

Defendants, Appellees.

JUDGMENT

Entered: July 31, 1985

This cause was remanded from the Supreme Court of the United States and was submitted on briefs.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court dismissing appellants claims is again affirmed.

By the Court:

Francis P. Scigliano

Clerk.

By: Richard W. Gordon

Chief Deputy

Clerk.

[cc: Mssrs. Ball, Bellotti and Roosevelt]

ORDER BELOW DENYING PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 84-1317

ALWIN E. HOPFMANN, ET AL.,

Plaintiffs, Appellants,

v.

MICHAEL JOSEPH CONNOLLY, ET AL.,

Defendants, Appellees.

BEFORE

CAMPBELL, Chief Judge,

COWEN,*Senior Circuit Judge,

COFFIN, BOWNES, BREYER AND TORRUELA,

Circuit Judges.

ORDER OF COURT

Entered: September 23, 1985

The panel of judges that rendered the decision in this case having voted to deny

the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the Court en banc,

It is ordered that the suggestion for rehearing en banc be hereby denied.

By the Court:

Francis P. Scigliano

Clerk.

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*Of the Federal Circuit, sitting by designation.

[cc: Mssrs. Ball, Bellotti and Roosevelt]

App. CC-2

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

ALWIN E. HOPFMANN, ET AL,

Plaintiffs,

v. CIVIL ACTION NO. 82-1530-MC

CIVIL ACTION NO. 84-393-MC

MICHAEL JOSEPH CONNOLLY, ET ALS,

Defendants.

MEMORANDUM AND ORDERS DISMISSING COMPLAINTS

OB 35

McNAUGHT, D. J.

In his complaint in 1982 Mr. Hopfmann,who sought to be a candidate in the Democratic primary for United States Senator, but was excluded from the ballot for failure to obtain the 15 percent of the votes cast at the Democratic Party Convention, attacked the validity of the the "15% Rule" for the first time. (The Rule requires that if a person is to run in a party primary, he or she must have received 15% of the votes on any ballot at the Convention endorsing the candidates.) His was not the only challenge to the

Rule. Frederick C. Langone brought an action in the courts of the Commonwealth of Massachusetts. Eventually the Supreme Judicial Court held that the 15 Percent Rule was not excluded by Chapter 53 of the Masachusetts General Laws; that the statute accommodated the Rule and that the Rule was not constitutionally invalid. Appeals were taken to the Supreme Court of the United States. Those were dismissed for want of jurisdiciton. Certiorari petitions were denied.

At the hearing on the issuance of a preliminary injunction on the 1984 complaint (in February of this year), the parties agreed that the matters submitted to the three-judge court on the 1982

complaint are no longer pending. They have been resolved. Defendants contend that no substantive issues remain for resolution by me as the single judge assigned to the action. Plaintiffs disagree. In early 1983, I asked that a statement of issues (for the single judge) be submitted by plaintiffs . It was filed February 9, 1984.

Motions to dismiss both actions (treated now as motions for summary judgemetn) were taken under advisement, once the parties had an opportunity to submit written arguments and briefs. After deliberation I conclude and rule that judgment for defendants must be entered in both cases.

With respect ot the civil Action No. 82-1530=MC, I am in agreement with the decision of the Supreme Judicial Court upholding the Rule's validity, and for the reasons expressed therein. Extensive repetition of those reasons is unnecessary. See Langone v. Secretary of the Commonwealth, 446 N.E.2d 43 (Mass. 1982f). The analysis of the right to associate with a political party, protected by the First and Fourth Amendment ot the United States Constitution, the interest of a party in ensuring that its members will have an effective role in deciding who will appear as a party's candidate, the fundamental right of association in a political party

and the integrity of the election process are all discussed as factors which do not require preclusion of the Rule as obstacles, but provide foundations for it. The Supreme Judicial Court cited Democratic Party of United States v. Wisconsin, 450 U.S. 1007 (1981) as authority for the proposition that the Rule requiring a modicum of support from members with substantial affiliation with the party is one mode of assuring freedom of association--association with the ability to limit control of its decisons to those sharing its interests. It was said, (and properly), that although the Rule has some impact on voters' rights and those of candidates, access to the ballot

was not denied unfairly.

Plaintiffs' claims were rejected by the Supreme Court (April 4, 1983). Appeals were dismissed and certiorari denied. No substantive issue remains to be determined. Plaintiffs' Article I, Sec. 4 claims have been rejected twice by a Single Justice of the Supreme Court. There is no substantial federal question to be determined and the action is dismissed on its merits.

The complaint in civil Action No. 84-393 was filed February 10, 1984. In a statement of reasons for denial of a preliminary injunction filed February 21 of this year, I wrote:

As stated hereinbefore, the plaintiff

in the second action does not concede the validity of the 15 Percent Rule. Indeed, it is specificallky averred in Paragraph XXXV that the "15 Percent Rule is an unconstitutional act", and elections thereby affected are "void" and a new special election should be held. Mr. Hopfmann, as a would-be candidate for the office of United States Senator from the Commonwealth of Massachusetts and as a voter, asserts that if the Rule is not invalid, it should be applied to all candidates for the office of President of the United States and for the office of United States Senator from Massachusetts; that it

should be applied not only to Democrats but to Republicans as well; that all persons who are candidates or "who have announced that they are thinking" of becoming candidates for the office of President of the United States or the United States Senate should be enjoined "until they comply with the 15 Percent Rule of the Democratic Party" from participating in any primary. He would have this Court enjoin the Secretary of the Commonwealth and the Director of Elections to remove all names from the presidential primary ballot in March, and to order the Republican State Committee also to enforce the

"15 Percent Rule".

If Mr. Hopfmann is denied preliminary relief and the 15 Percent Rule remains in effect, the rule will be applied to him and to all other potential candidates at the Democratic party's primary convention, scheduled to be held in June in the Commonwealth of Massachusetts. Should he fail to meet the requirements of the 15 Percent Rule, the Secretary of the Commonwealth will not allow his name to appear upon the printed primary ballot. Mr. Hopfmann will have suffered harm at that time. On the other hand, if an injunction as

> requested in this action is granted, the campaigns of all candidates for the presidency will be disrupted, as well as the campaigns of all candidates for the United States Senate from Massachusetts (Democrat and Republican alike). The public interest in orderly timely elections will be disrupted as well. A balance of these factors militates against the issuance of an injunction.

The reasons that I gave at that time for the conclusion that the plaintiffs had not shown a likelihood of success on the merits afer further study, provide the basis for the conclusion that the judgment must enter in favor of the defendants.

His contention that the 15 Percent Rule is invalid has been testedinthe past, and found wanting. It has been the subject of adverse opinion by the Supreme Judicial Court of Massachusetts, and the Supreme court of the United States thereafter dismissed appeals and denied certiorari. On two other occasions, single justices of the Supreme Court of the United States have failed to find merit in his claims. Secondly, he asks to have a rule of the State Democratic Committee applied to persons seeking the Republican nomination. There will be no Republican nominating

convention in Massachusetts in 1984. Neither the State nor this Court can enforce a Democratic 15 Percent Rule upon the Republican party. Thirdly, Mr. Hopfmann seeks to have the 15 Percent Rule of the Democratic Party applied to candidates for the presidency. The presidency is an office of nation-wide scope. It is not a state-wide office as Mr. Hopfmann clailms. Finally, as we were reminded in argument, the purpose of the presidential primaries in the Commonwealth of Massachusetts is not to provide party nominees, but establishes the proportionality of the Massachusetts

delegations to the nominating conventions.

Plaintiffs, other than Mr. Hopfmann, have no standing to bring this action. He, at least, was a potential candidate for office. The others cannot claim that the Rule is applied against them at all. They have no personal involvement, and appear to be seeking an opinionfrom this Court of an advisory nature only, for the possible benefit of others. United Public Workers of America v. Mitchell, 330 U.S. 75 (1947) requires the conclusion of lack of standing on their part. Indeed, there is even qustion pertaining to the standing of Mr. Hopfmann. Even assuming standing, the complant must be and is hereby

dismissed.

[signature]

JOHN J. McNAUGHT

UNITED STATES DISTRICT

JUDGE

April 9, 1984

OB 49

App. F-1

OPINION OF THE JUSTICES TO THE GOVERNOR, Supreme Judicial Court of Massachusetts. April 23, 1982. 385 Mass. 1201.

A question was propounded by the Governor of the Commonwealth of Massachusetts to the Justices of the Supreme Judicial Court with respect to the nomination of party candidates for placement on the state primary ballot. The Justices of the Supreme Judicial Court, gave answer that proposed mandatory statute providing that "Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination of the state primary" would abridge the constitutional rights of the party and its members to

associate while allowing candidates to be placed on the state primary ballot in contravention of the party's charter.

Question answered.

On April 23, 1982, the Justices submitted the following answers to questions propounded to them by the Governor.

To His Excellency, the Governor of the Commonwealth of Massachusetts:

The Justices of the Supreme Judicial Court respectfully respond to the questions set forth in the Governor's request dated April 5, 1982, and transmitted to the Justices on April 6, 1982.

General Laws c. 53, § 44, as amended through St. 1981, c. 278, § 1, provides in part that "(t)he nomination of candidates for nomination at State primaries shall be by nomination papers." There is pending before the Governor for his approval

House Bill No. 5852, which would amend c.53, § 44, by inserting after the first sentence the following sentence: "Notwithstanding the charter, rule or by-law of a political party, any candidate, who is enrolled in such political party, submitting nomination papers subject to the provisions of this chapter shall be a candidate for nomination at the state primary." Article Six, Section III, of the charter of the Democratic party of the Commonwealth of Massachusetts, provides "There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the

proviso that any nominee who receives at least 15 percent of the Convention vote on any ballot for a particular office may challenge the Convention endorsement in a State Primary Election."

Stating his uncertainty "as to the necessity or constitutionality of H.5852 if enacted into law," the Governor requests, pursuant to the authority contained in Pt. II, c.3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Articles of Amendment, the opinion of this court on the following questions of law:

> "1. Does the fifteen percent rule in the Democratic Charter supersede the current provisions of General Law, Chapter 53, Section 44, or can a candidate be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of

the vote at the party convention?

"2. Would enactment of H.5852 allow a candidate to be placed on the Democratic State Primary Ballot by nomination papers without having received fifteen percent of the vote at the party convention?"

The constitutional provision which empowers us to answer questions propounded by the Governor, the Council, and the Legislature, restricts our authority to "important questions of law" and to "solemn occasions." Part II, c. 1, § 1, art. 2 of the Massachusetts Constitution. To preserve the principle of separation of powers, fundamental in our system of government, we are bound strictly to observe these constitutional limitations. Answer of the Justices, 362 Mass. 914, 916-917, 291 N.E. 2d 598 (1973). As the Justices have ad-

vised, "By a solemn occasion the Constitution means some serious and unusual exigency. It has been held to be such an exigency when the Governor or either branch of the Legislature having some action in view has serious doubt as to their power and authority to take such action, under the Constitution, or under existing statutes." Answer of the Justices, 373 Mass. 867, 871, 366 N.E. 2d 730 (1977), quoting from Answer of the Justices, 148 Mass. 623,625-626, 21 N.E. 439 (1889).

(1) Because question number 1 inquires only about the legal effect of the current statute in light of the Democratic party charter, and not about the Governor's authority to take action, there is no solemn occasion authorizing us to answer. Opinion of the Justices, ___ Mass. ___, ___ _ ___, Mass.Adv. Sh.

(1981) 1361, 1381-1382, 424 N.E. 2d 1092. It may well be that the Justices' answer to question number 1 would help the Governor determine the "necessity" of House No. 5852 in view of the present statute, a concern expressed in the request. However, whether the bill is necessary raises the question whether it is wise or expedient for the Governor to approve the bill. The Justices are not empowered to answer questions bearing on the wisdom or expediency of proposed legislation. Answer of the Justices, 319 Mass. 731, 734, 66 N.E. 2d 358 (1946). Opinion of the Justices, 314 Mass 767, 771-772, 49 N.E. 2d 252 (1943). Not having the authority to answer question number 1, we respectfully request that we be excused from answering it.

In the context of the Governor's expressed uncertainty as to the constitutionality of House No. 5852, we interpret question number 2 to inquire whether, if House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the Democratic State primary ballot in contravention of the party's charter. The Governor has a present duty to act on House No. 5852. Part II, c. 1 § 1, art. 2, of the Massachusetts Constitution. This duty, and the Governor's expressed doubt about whether House No. 5852 would be constitutional if he approved it, present a solemn occasion requiring our answer to the second question. See Opinion of the Justices, 314 Mass. 767, 772, 49 N.E. 2d

252 (1943).

"The (Democratic Party of the Commonwealth) and its adherents enjoy a constitutionally protected right of political association. 'There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments ... . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom.' Kusper v. Pontikes, 414 U.S. 51, 56-57, 94 S.Ct. 303, 307, 38 L.Ed.2d 260 (1973). 'And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.' Williams v.

Rhodes, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10-11, 21 L.Ed. 2d 24 (1968). Moreover, '(a)ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1211, 1 L.Ed.2d 1311 (1957); see NAACP v. Button, 371 U.S. 415, 431, 83 S. Ct. 328, 337, 9 L.Ed.2d 405 (1963)." Cousins v.Wigoda, 419 U.S. 477, 487-488, 95 S.Ct. 541, 547, 42 L.Ed.2d 595 (1975). "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." Democratic Party of U.S. v. Wisconsin, 450 U.S. 107, 122n22, 101 S.Ct. 1010, 1019, 67 L.Ed.2d 82 (1981), quoting L. Tribe, American Constitutional Law 791

(1978). A determination of who will appear on a general election ballot as the candidate endorsed by an identified political party is a critical decision for that party. The party, therefore, has a substantial interest, implicit in its freedom of association, to ensure that party members have an effective role in that decision. Democratic Party of U.S. v. Wisconsin, supra.

Within the Commonwealth, the winner by a plurality of a party primary becomes that party's candidate for statewide office in the general election. G.L. c 53, § 2. Voting in party primaries is limited to enrolled party members and unenrolled voters who enroll at the polls just before receiving ballots. G.L. c. 53, § 37. Apart from Article Six, Section III, of the State Democratic party charter, in order to be placed on a party's primary

ballot, a candidate for statewide office must be an enrolled member of that party, G.L. c. 53, § 48, and submit nominating papers signed by at least 10,000 registered voters, c. 53, § 44, who may be enrolled in that party or unenrolled. G.L. c. 53, § 46. Therefore, apart from Article Six, section III, of the State Democratic party charter, a candidate for statewide election could be placed on the Democratic party ballot and win the primary, thus becoming entitled to be placed on the general election ballot as the Democratic party candidate, with little or no support from the regular party membership.[1/]

1/ As of February, 1980, 39.9% of all registered voters in the Commonwealth were unenrolled. Bachrach v. Secretary of the Commonwealth, ___ Mass. ___, ____, Mass.Adv.Sh.(1981) at 97 415 N.E.2d 832.

The State Democratic party charter, Article Six, Section III, proviso that any nominee who receives at least 15% of the vote at the State convention may challenge the convention endorsement, by negative implication adds to the statutory requirement of nomination papers for placement on the primary ballot the further requirement that a candidate must receive at least fifteen percent of the convention vote. This has the double effect of limiting the number of candidates on the primary ballot, thereby eliminating the confusion that may result from too many candidates, and of limiting the candidates to those with significant party support, thereby giving the party members an effective role in choosing the party's candidate in the general election. The State has been held to have a compelling

interest in limiting the number of candidates in order to prevent voter confusion. American Party of Texas v. White, 415 U.S. 767, 780-781, 94 S.Ct. 1296, 1305-06, 39 L.Ed.2d 744 (1974). Storer v. Brown, 415 U.S. 724, 732, 94 S.Ct. 1274, 1280, 39 L.Ed. 2d 714 (1974). A political party has a parallel interest.

If House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would appear to override the charter requirement of 15% of the convention vote for placement on the primary ballot and, together with c. 53, § 46, would eliminate the Democratic party's control of who its candidate in the general election would be. This would substantially infringe the right of freedom of association of the Democratic party and its members, and therefore, to pass constitutional

muster, it must serve a compelling State interest, Sears v. Secretary of the Commonwealth, 369 Mass. 392, 397, 341 N.E. 2d 264 (1975), and do so with as little infringement on constitutional rights as possible. See Riddell v. National Democratic Party, 508 F.2d 770, 776-778 (5th Cir. 1975). We must apply "strict scrutiny" to its justification and operation. Bachrach v. Secretary of the Commonwealth, ___ Mass. ___, ___, Mass.Adv.Sh. (1981) 93, 101, 415 N.E.2d 832.

The Commonwealth unquestionably has a compelling interest in the overall regularity of the election process, including limitation of the number of candidates on the ballot so as to avoid voter confusion and ensuring that the candidates whose names appear on the ballot have significant community support.

American Party of Texas v. White, 415 U.S. 767, 782, 94 S.Ct. 1296, 1306, 39 L.Ed.2d 744 (1974). This applies to the conduct of primary elections, Kusper v. Pontikes, 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973), Rosario v. Rockefeller, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d L (1973), which are an important part of the procedure by which the ultimate office holder is chosen. Sears v. Secretary of the Commonwealth, supra, 369 Mass. at 398, 341 N.E.2d 264. These interests are served by the requirement that each candidate for statewide office obtain the signatures of at least 10,000 registered voters on nomination papers, G.L. c. 53, § 44, but they are not served by the elimination of a 15% convention vote requirement for placement on the primary ballot. Elimination of the Democratic party charter

requirement could only increase the number of candidates on the primary ballot, with a resulting increased potential for voter confusion.

We assume that House No. 5852 was designed to promote the integrity of the election process. Nevertheless, the Commonwealth's compelling interest in the integrity of the election process does not constitutionally justify elimination of party control over who the party's candidate in the general election will be. This view finds support in Democratic Party of U.S. v. Wisconsin, supra. In that case, the United States Supreme Court struck down a State statute that compelled the party to seat delegates at its national convention who were bound by the statute to vote on the first ballot with the results of a primary election in which any

registered voter could participate regardless of party affiliation. This was contrary to the national party rules. Wisconsin impermissibly attempted to override the national party's attempt to limit "those who could participate in the processes leading to the selection of delegates to their National Convention." Id. 450 U.S. at 122, 101 S.Ct. at 1019. General Laws c. 53, § 44, as it would be amended by House No. 5852, would attempt to override the State Democratic party's effort to ensure that regular party members have a substantial voice in the selection of its candidates for statewide office, and that, at least in conjunction with §§ 44, 46, and 37 of G.L. c. 53, is impermissible. If the law of the Commonwealth were to require that nomination papers be signed only by regular members

of the party, contrary to c. 53, § 46, or that only regular members of the party may vote in the primary, contrary to c. 53, § 44, as it would be amended by House No. 5852, would be less intrusive on a political party's constitutional rights. However, we express no opinion on whether it would be sufficiently less intrusive to be constitutionally sound, since that is not the question before us, nor need we consider whether any proviso of the Constitution of the Commonwealth might prohibit the proposed enactment.

(2) We answer question number 2, as interpreted by us above, as follows: If House No. 5852 were approved, G.L. c. 53, § 44, as thereby amended, would abridge the constitutional rights of the Democratic party and its members to associate by allowing candidates to be placed on the

Democratic State primary ballot in contravention of the party's charter.

The foregoing opinion is submitted by the Chief Justice and the Associate Justices subscribing hereto on the 23rd day of April, 1982.

EDWARD F. HENNESSEY

HERBERT P. WILKINS

PAUL J. LIACOS

RUTH I. ABRAMS

JOSEPH R. NOLAN

NEIL L. LYNCH

FRANCIS P. O'CONNOR

CONSTITUTIONAL AND STATUTORY PROVISIONS:

A. CONSTITUTIONAL PROVISIONS

Art. I, Sec. 3, Cl. 3:

No Person shall be a Senator who shall not have attained the Age of thirty years, *and been nine* Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Art. I, Sec. 4, Cl. 1:

The Times Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators.

First Amendment:

Congress shall make no law...abridging the freedom of speech,...or of the right of the people peacably to assemble, and to petition the government for a redress of grievances.

XIVth Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any personwithin its jurisdiction the equal protection of the laws.

XVIIth Amendment:

The Senate of the United States shall be composed of Two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

CONSTAT 3

STATUTES:

42 U.S.C. 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory, subjects, or causes to be subjected, any citizen of the United States or other person withn the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. 1652:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

2 U.S.C. 431(1):

The term "election" means--

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(B) a convention ..of a political party which has authority to nominate a candidate.

2 U.S.C. 431(2):

The term "candidate" means an individual who seeks nomination for election...to Federal office...

2 U.S.C. 431 (3)

The term "Federal office" means the office of Senator ...in Congress..."

Mass. Acts 1973 c. 429:

Chap. 429 AN ACT REPEALING THE LAW PROVIDING FOR PRE-PRIMARY CONVENTIONS OF POLITICAL PARTIES.

Be it enacted, etc., as follows:

....

Secs. 1 through 3 of the 1973 Act are omitted as they remove peripheral references from the General Laws and are in the Appendix, Vol. 3, Supplementary, filed in 84-1440. Section 4 below removed the actual enabling sections. The next page is CONSTAT 17

SECTION 4. Section 44 of said chapter 53 is hereby amended by striking out the first and second sentences and inserting in place thereof the following two sentences:--

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of offices to be filled by all the voters of the commonweath[sic], nomination papers shall be signed in the aggregate by at least ten thousand voters.

SECTION 5. Sections fifty-four, fifty-four C and fifty-four D of said chapter fifty-three are hereby repealed.

(This bill, returned by the Governor, to the House of Representatives, the

branch in which it had originated, with his objections thereto, was passed by the House of Representatives, June 19, 1973, and, in concurrence, by the Senate, June 19, 1973, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution; and thereby has "the force of a law".)

Mass. Gen. Laws, Chapts. 53, 54,
Method of Nomination Papers:

Mass. Gen. Laws, Chapt. 53, Sec. 2:

...candidates of political parties for all elective offices,...shall be elected, in primaries or caucuses,...All nominations and elections in primaries and

caucuses shall be by direct plurality vote. No candidates shall be nominated, and no member of a political committee or coonvention delegate elected, in any other manner than is provided in this chapter....

Mass. Gen. Laws, Chapt. 53. Sec. 34:

Except where vacancies caused by death, withdrawal or physical disability are filled, no names shall be printed on a ballot other than those presented on nomination papers.

Mass. Gen Laws, Chapt. 53, Sec. 44:

The nomination of candidates for nomination at state primaries shall be by nomination papers. In the case of...United States senator, nomination

papers shall be signed in the aggregate by at least ten thousand voters;

Mass. Gen. Laws, Chapt.54, Sec. 41:

Ballots for the use of voters in a voting precinct, polling place or town shall contain the names of all candidates duly nominated for election therein,...

Place of "Chusing" of United States senators:

Mass. Gen. Laws, Chapt.53, Sec. 28:

State primaries shall be held on the seventh Tuesday preceding biennial state elections....

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Except in Boston, primaries shall be held wholly or partly by wards, precincts

or towns, as the aldermen or selectmen may designate.

Mass. Gen. Laws, Chapt. 54, Sec. 24:

The aldermen in cities, except where city charters provide otherwise, and the selectmen of towns divided into voting precincts, shall, twenty days at least before the biennial state...election..., designate the polling place for each voting precinct and cause it to be suitably fitted up and prepared therefor.

Primaries mandated:

Chapter 53:

Section 41. Primaries shall be held for the nomination of candidates of political parties for all offices to be filled at a state election, except presidential elector. Sections forty-two to fifty-three A, inclusive, shall apply to such primaries.

[Former sections, now repealed, that authorized party pre-primary conventions]:

Chapter 53:

[Former Section 54]:

[PROVISIONS APPLYING TO PRE-PRIMARY CONVENTIONS

Caption amended St.1932, c.310, Sec.21,c.346,Sec.2,st.1953,c.406,Sec.7

Sec. 54. State conventions of political parties. Beginning in the year nineteen hundred and fifty-four, a political party shall, upon the call of its state committee, but not later than June twentieth and not earlier than June fifth, in a year in which a biennial state

elections is held, hold a state convention for the purpose of adopting a platform, electing such number of members at large of the state committee as may be fixed by the convention, and endorsing for nomination candidates for the offices to be filled by all the voters of the commonwealth, to be voted for at the ensuing state primary, and for such other purposes consistent with law as the convention may determine. Such convention shall consist of delegates chosen by the ward and town committees. The number of delegates shall be one from each ward and town and one additional for every one thousand votes or major fraction thereof cast at the preceding biennial state election, in such ward or town, for the respective party's candidate for governor. Each such ward or town committeee desiring representation at such conventio shall, within fourteen days after a meeting duly

called for the pur- pose of selecting a delegate or delegates, notify the respective city committee, in the case of a city, or the state committee, in the case of a town, but in no case shall such notice be given less than fourteen days prior to the date appointed for the opening of such convention. No vacancy shall be filled for any reason. Nothing herein contained shall affect or diminish the operation of the laws relating to state primaries contained in sections forty-one to fifty-three, inclusive. As amended St.1932,c.310, Sec. 21;St.1935, c.482,Sec.1; St.1936, c.11,Sec.1; St.1937, c.24,Sc.3; St.1938, c.346,Sec.2;St.1941, c.337,Sec.11;St.1953, c.406,Sec.7;St.1955, c.138,Sec.4;St1957,c.278,Sec.2.]

[Former Sec. 54C]

[Sec. 54C. Certificates of nomination of candidates endorsed by state

Every certificate of nomination of candidates endorsed for nomination by a state convention shall state that the nomineee has been endorsed for nomination at such convention and shall include such facts as are required by section eight. such certificates shall be signed, sworn to and filed as required by section five.

Each such candidate shall, within ten days from the day when the convention terminates, file with the state secretary his written acceptance of the nomination, otherwise his name shall not be printed on the ballot as a candidate for the office to which he was nominated, and he may add the eight-word statement authorized by section forty-five. such candidate may not withdraw such acceptance. Added St.1953,c.406,Sec.8.]

[Former Sec. 54D]

[Sec. 54D. Pre-primary conventions; procedure; officers; penalties. Delegates

shall be seated in groups by senatorial districts as determined by the state committee. The convention shall be called to order by the chairman or acting chairman of the state committee, or in the absence of either, then by a person designated in such manner as the rules of the party shall prescribe. The person who calls the convention to order shall preside until the election of a permanent chairman. He shall appoint a temporary secretary to receive the roll of the convention and a monitor from each group who shall receive the credentials of delegates and present them to the temporary secretary.

The convention shall not proceed to the election of a permanent chairman or transact any businesss until the time fixed for the opening thereof, nor until a majority of the delegates named in the official roll shall be present. It shall

then elect from among its delegates a permanent chairman and a permanent secretary, neither of whom shall be an officer of the state committee, and shall complete its organization. It shall make suitable rules for the conduct of its business, the order of which shall follow the purposes of the convention as stated in section fifty-four. The permanent seceretary shall keep the records of the convention and transmit the same to the state secretary who shall retain them for a period of one year.

The permanent chairman and permanent secretary shall be chosen upon a call of the official roll. Committees of the convention shall be appointed by the convention, or by the permanent chairman, as the convention may order. When the vote of the convention is taken upon the election, nomination or endorsement for nomination of any candidate, the roll of

the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that when there is only one candidate to be voted for, the roll need not be called, and except also that the monitor of a group, unless a member of the group objects, may announce the vote of such group.

A delegate to a pre-primary convention who corruptly requests or accepts a gift or gratuity under an agreement or with an understanding that his vote shall be given for any particular candidate or any person who offers such a gift or gratuity with such understanding or agreement shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days or both. Added St.1953,c.406,Sec.8.]

FROM THE AGREED UPON LEGISLATIVE HISTORY FROM THE COURT BELOW

"UNREFORMING THE PARTIES" BY J. PATRICK DOBEL and RONALD R. STOCKTON

Published in COMMONSENSE, Summer, 1979

Something is clearly wrong with our political system. The symptoms of malfunction are obvious; individual participation has dropped precipitously; factionalism has increased and wields greater impact; political debate has shifted from substantive issues to issues of symbolism or of ad hoc self-interest; individuals move from oblivion to the centers of power with astonishing and disturbing ease; fewer citizens than ever before identify with political parties; faith in public institutions declines in a rapid spiral.

While many factors contribute to these tendencies, a fundamental political problem is that political parties are not performing their functions. Without working parties, social cohesion and the ties of one individual to another break down as do the linkages of individuals to political structures. The political effectiveness of the system, particularly its ability to mediate conflict and arrive at a workable consensus, is also considerably impaired.

We believe much of the decline of the party as an effective institution can be traced to certain changes and "reforms" made in recent years. After discussing the functions of the parties and the consequences of their disruption, we will propose several not-too-modest "unreforms" to revivify the parties.

Functions of Parties

It is intriguing that in many countries where there is no organized opposition and no system of free elections, the government nevertheless finds it desirable to maintain political parties and to hold periodic elections. In American society, we think of elections as primarily serving to select between policy alternatives but, in fact, selection of policy alternatives is only one of several functions performed by an election campaign. On a long range basis, the others are more important.

First, elections and parties develop linkages between the individual and the political system.

....

The next page is L 22.

The proposals encompass three areas: primaries and conventions, the civil service merit system, and the expenditure patterns of candidates. Although the proposals center on the federal level, their analogues apply at the state and local levels.

First, all party decisions relating to policy and candidates should be made by conventions at which no more than one-half of all delegates are chosen by primaries. This rule would apply at both federal and state levels and would mean that delegates to the national nominating conventions would be chosen by state conventions rather than by direct vote of the public. We feel strongly that primaries should be used to send a message to the conventions and not to make decisions. This proposal recognizes the role of primaries as a

check on bossism yet avoids the dangers inherent in an unlimited primary.

Second, a modified spoils system should be introduced. All policy-making positions should continue serving at the behest of the administration in power. In non-policy civil service grades, however, 5-10 percent of all new federal appointments which open as a consequence of retirement or new funding should be filled on the basis of demonstrated civil service competence and the political recommendations of the party. These positions would be allocated to state party commissions on the basis of the parties' performances in the last presidential election. Seventy percent of the positions would go to the party which carried the state and 30 percent would go to the losing party. Additionally the Hatch Act should be

repealed or modified to allow government employees full participatory rights.*

*(Ed.Note) Lest the Democratic authorship of the article be in doubt, this proposal is one on which most Republicans, in the past, have disagreed with the authors, while not wholly dissenting from the notion that a patronage system does have its virtues. As this issue went to press, the entire subject was somewhat clouded by a ruling from the U.S. District Court in Chicago, that political patronage represents an unconstitutional deprivation of equal protection and due process of the law. Shakman, et al. v. Democratic Organization of Cook County, Civil No. 69C2145 (1979)

....

The next page is L 30.

Shifting the balance back to a caucus and reintroducing spoils takes account of the fact that real-life politics is a human activity. Political work requires time and energy. Most of us do not have or only occasionally have the fervor to spend long hours for an ideal or crusade. But we usually can care if there are possibilities of real human satisfactions from working with people, having responsibility, influencing and meeting candidates, and going to conventions. It might even mean a job for oneself or people we care about.

New decision power and the resources of new people and patronage will give the party its own bargaining chips to counteract the sources of economic or ideological political wealth. The self-interest of candidates will lead them back to work with the parties: first, the party will

be the focus of critical decisions for their own continued career; second, politicians will need the patronage and have to meet with the state party apparatus to gain access; third, the party can once again provide an independent haven to support its own political integrity against the specific and rigid demands of single-interest groups; fourth, with limits upon media expenditures, candidates will not be able to ride a media-coteria route to office and will need party resources; fifth, candidates will work with the party in election years since all state politicians gain from the success of the party through the patronage pool.

The reestablishment of a working relationship between politicians and their parties will make party loyalty an issue for the politician. The party's new

negotiating position would give it some small chance of reintroducing some responsibility and discipline into its own ranks. Confronting real people in smoke-filled rooms and conventions is far more efficacious for political accountability than making television commercials. Candidate training would be more complete: they would learn bargaining, communication, and compromise skills, and party structure would gradually generate new candidacies from its own ranks. Coteries would be less closed since candidates could no longer hide behind television screens; more hard bargaining would take place and coteries would be more open and co-optative.

Our proposals will not end the paralysis of American politics or create a new consensus, but ....

FROM THE AGREED UPON LEGISLATIVE HISTORY

FROM THE COURT BELOW

"DEMOCRATIC COMMISSION DRAFTS PARTY CHARTER" BY JEROME MILEUR

Ed McColgan, a former state legislator and unsuccessful candidate for Congress in 1976, told the Massachusetts Democratic Charter Commission last fall that there is "almost no real Democratic Party organization in this state at the local level." In his bid for Congress, McColgan said, only 14 of the 88 Democratic town and city committees in the First District gave any financial help, and only about ten others even "took the time to meet and endorse me." "You court ward and town committees," he added, "because you

have to, but in almost all cases they're an insignificant factor."

McColgan's lament became a familiar refrain to the 25 members of the Charter Commission, which was created last September by then-state party chairman Charles Flaherty after being mandated by vote of the party's 1977 state issues convention. The Commission began its work in October by holding seven public hearings attended by several hundred Democrats across the Commonwealth. Several themes ran through the testimony it hears: the organizational decay of the party at its grass roots, the weakness of the state committee, and the absence of party discipline and accountability.

In November, when the Commission turned to the actual drafting of a charter, there was general agrteement among its members that significant changes would

have to be made in party structure if the desires of rank-and-file Democrats for a stronger party were to be realized. The Commission unveiled its work in late March, and the draft charter now being circulated to Democratic town, ward and city committees does indeed call for major changes in current party structure.

The proposed charter restores the state convention, which was abolished in 1972 by a Democrat-controlled state legislature. In fact, the charter calls for two kinds of state conventions -- an issues convention in odd-numbered years to adopt a party agenda, and an endorsing convention to pick candidtes for statewide (Constitutional and U.S. Senate) offices in even-numbered years when any are to be filled. Many local Democrats attributed the deterioration of town and ward commit-

tees to the elimination of state conventions; and former House Speaker, David Barrley, at a recent state party gathering in Northampton, called the vote to repeal the convention, taken during his tenure as Speaker, a "mistake."

The draft charter also changes the way in which conventions are organized and operate. Delegates are to be allocated to towns and cities on the basis of "one-Democrat, one-vote" formula, and are to be chosen at local party caucuses open to all enrolled Democrats and not just to members of local party committees. Resolutions for issues conventions are to be developed through processes beginning at local caucuses, and are to be adopted by majority vote of the convention. Convention endorsements are also to be made by majority vote, but any candidate receiving at least 20 percent of the vote on any ballot

for a particular office would be permitted to challenge the convention endorsement in the state primary.

Several major changes are proposed for the party's state committee, which was a target of frequent criticism from town and ward Democrats, Reflecting recommendations from local Democrats, the charter provides for the election of state committee members by direct vote of town and ward committee members, rather than at presidential primaries, and for shortening state committee terms from four to two years. The first links the state committee organizationally to local party committees, and the second affords the latter frequent opportunity to hold their state committee members accountable to local interests and concerns.

The proposed charter also spells out the duties and responsibilities of the

state committee. It gives the committee responsibility for conducting the party's state campaigns, filling vacancies in party nominations for statewide or congressional office, formulating and disseminating statements of party policy, and raising and disbursing monies needed to operate the party. It furthermore directs the state committee to set standards for local committee by-laws, to maintain regular communication and provide training and other services for local committees, and to monitor local committees and elected officials of the party to assure support for candidates and policies of the party.

The draft charter, in addition, enlarges the size of the state committee from its present 90 members to approximately 300, a change intended to broaden and diversify participation in party

affairs at the state level. The great majority of state committee members, 250 of the total, are to be elected by members of local party committees, with the remainder being ex-officio (Democratic constitutional officers, state legislative leaders, members of Congress and of the national committee) and affirmative action members. The charter also requires that the state committee meet at least six times a year, and that individual state committee members meet at least twice annually with town, ward and city committees within their districts.

The Commission has struggled with the question of what the district should be from which to elect state committee members. At present, they are chosen from state senate districts, and the Commission initially agreed to continue this practice. It subsequently reconsidered that

decision, flirted briefly with counties as the unit from which to elect state committee members, and settled finally on congressional districts. The problem has been to find a unit that is simultaneously fair to all elements in the party -- geographic and other -- and workable. It is a problem to which the Commission will no doubt return.

The proposed charter makes several changes in the election and organization of local party committees. Town and ward committee members will continue to be elected at presidential primaries for four-year terms, but slate voting is eliminated and instead candidates for local committee positions will file as individuals. Officers of local committees will be elected every two years, rather than every four as is now the case, and local committees will be required to meet

at least six times a year. these changes, like those in the state committee, reflect recommendations made repeatedly during the Commission's fall hearings.

Another recommendation advanced frequently by rank-and-file Democrats was that the Commission authorize local committees to remove so-called "dead wood" (inactive members) and to discipline those who supported candidates of another party. In this regard, the draft charter provides that state and local committee members may be removed through procedures guaranteeing due process and requiring majority vote of committee members for the following reasons: failure to attend half of the regularly scheduled committee meetings in a calendar year, public opposition to a

nominee of the party or public support for another party or candidate thereof, unauthorized use of the party name or resources, or conviction after appeals are exhausted of a criminal offense other than a misdemeanor.

The proposed charter does a number of other things as well. It establishes a five-member state judicial council responsible for compliance of state and local committees with the charter and for adjudicating disputes arising from it or between party committees at any level. It mandates a program of affirmative action and outreach designed to encourage full participation in party affairs at all levels by all segments of the population. Finally, it requires the state committee to adopt codes of ethical conduct and fair ampaign practices for all party members and candidates, requires party meetings at

all levels to be open to the public, and eliminates secret and proxy voting.

A Worcester Democrat told the Commission last fall, "People who are Democrats have the right to expect that they'll have something to say about what their party and its officials do." The proposed party charter is designed to give rank-and-file Democrats that right. The charter has now gone to Democratic town, ward and city committees for their reactions, after which the Commission will make revisions as seem appropriate. The Commission's final draft will be submitted for ratification to a state charter convention presently planned for next September. It will be an opportunity for Democrats in Massachusetts to move toward the strong and responsible party so many desire. It may be the last such opportunity for some time to come.

FROM THE AGREED UPON STATEMENT OF FACTS IN THE DISTRICT COURT

As Incorporated from the Agreed Upon Statement in Langone:

1970 Convention

28. The State Democratic Party held a pre-primary convention on June 12, 1970.

29. The delegates to the 1970 State Democratic convention were selected in accordance with G.L. c. 53 Secs. 54-54D, as then appearing, and the conduct of the convention and the qualifications of candidates to appear on the primary ballot were governed exclusively by the existing state statutory scheme.

1972 Convention

30. The State Democratic Party held a

pre-primary convention on June 10, 1972.

31. The delegates to the 1972 State Democratic convention were selected in accordance with G.L. c. Secs. 54-54D, as then appearing, and the conduct of the convention and the qualifications of candidates to appear on the primary ballot were governed exclusively by the existing state statutory scheme.

32. There were no pre-primary or endorsing conventions conducted by the State Democratic Party between 1972 and 1982.

1979 CHARTER CONVENTION

33. Pursuant to a vote of the Democratic State Committee, the Chairman, Charles F. Flaherty, in February, 1977,

appointed a Charter Commission to draft a proposed charter for the State Democratic Party.

34. The Charter Commission of the Massachusetts Democratic Party submitted a proposed charter which provided in pertinent part in Article Six, Section III, that:

ENDORSING CONVENTION

> There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the provision that any nominee who recieves at least 20 percent of the Convention vote on any ballot for a particular office may challenge the convention endorsement in a State Primary Election.

34A The documents which are attached hereto as Attachments 7A through 7D are true copies of documents which are attached hereto as Attachments [legislative history documents included in this appendix] are true copies of documents which were available to the Charter Commission during its deliberations.

35. The delegates at the 1979 Charter convention were elected at caucuses on March 24, 1979, conducted in each ward and town in the Commonwealth. Approximately, 30,000 individuals participated in the caucuses.

36. Any and all registered democrats

could take part in the caucuses which elected the delegates to the 1979 Charter Convention. Registration was determined by official city or town records. There was no requirement establishing the length of time and individual had to have been enrolled in the Democratic Party prior to taking part in the caucuses which elected delegates to the 1979 Charter Convention.

37. A convention of the State Democratic Party was held on May 19, 1979 for the purpose of adopting a Charter for the State Democratic Party.

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39. On May 19, 1979, a notice was distributed to all delegates attending the 1979 Charter Convention. A true copy of

that notice is attached hereto and incorporated herein as Attachment No. 8.["Important Notice" legislative history document included in this appendix]

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42. Defendant Michael J. Connolly, as a Democrat holding the position of Secretary of the Commonwealth, was and is a member of the Democratic State Committee. As a member of the Democratic State committee, he attended the Charter Convention as a voting delegate...

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44. During the November 17, 1979 continuation of the Charter Convention an amendment was adopted to amend Article Six, Section III, by substituting "15%"

in place of "20%".

45. The question of whether legislation would be necessary to implement the 15% requirement imposed by Article Six, Section III of the Charter was discussed by the Convention delegates and was unresolved.

46. The provisions of Article Six, Section III, as they currently read, were adopted at the November continuance of the Charter Convention.

1982 CONVENTION
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58. If allowed, Chester G. Atkins, the Chairman of the Democratic State Committee would testify that he stated at said meeting his opinon that the case of

Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 1981), could make Article Six, Section III and the "15 percent rule" contained therein effective without legislation.

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61. Delegates to the 1982 Endorsing convention were elected at caucuses conducted in each ward and town of the commonwealth on february 6, 1982. The primary notice of the 1982 Democratic caucuses given to registered Democrats was by newspaper announcements run at least once in every daily or weekly newspaper throuyhout the the Commonwealth. Notices were also sent to affirmative action organizatons throughout the Commonwealth.

62. Any and all registered democrats could take part in the February 6, 1982 caucuses. To take part in the February 6, 1982 caucuses an individual had toahve been enrolled in the Democratic Paty on or before December 31, 1981, as determined by official city or town records.

63. Approximately 100,000 individuals participated in the caucuses held on February 6, 1982.

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97. Since 1972, no Democrat who has obtained the nomination of the Democratic Party at a state primary for a statewide elective office, has lost in the general election.

Legislative History, Att.8, refered to in

39 above:

DEMOCRATIC STATE COMMITTEE Chet Atkins, Chairman, 14 Beacon Street*Suite 719*Boston*Massachusetts 02108*(617) 367 4760

IMPORTANT NOTICE

TO:CONVENTION DELEGATES
FROM: DEMOCRATIC STATE COMMITTEE

There is presently a case before the United States Supreme Court (Marchioro v. Chaney) which may directly affect the actions taken at today's convention.

In July of 1978, the Washington State Supreme Court ruled on a case involving a conflict between state law and party law. By a vote of 5-4, the court held that the provisions of state law prevailed over the

provisions of the state's Party Charter.

This decision has been appealed to the U.S. Supreme Court. The decenting[sic] opinion from the Washington State Supreme Court held that a Party's internal organization should be decided by the Party without regard to state law.

There is a distinct possibility that the decision of the Washington State Supreme Court will be reversed by the U.S. Supreme Court, and that a Party Charter will be held to supersede state law.

Please keep this in mind when voting on the Charter.